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The patrimony blind spot of Geographical Indication in state-centred governance: Mikawa region agri-food products in Japan

Hart N. FEUER, Fatiha FORT¹

Abstract – Geographical Indication (GI) has been employed in Europe to promote well-known agri-food products, many with reputations going back hundreds of years, so there has been an assumption that the protection of such historical patrimony would materialize in countries adopting European-style GI policies. However, from a public policy view in many new GI countries, the primary goal for GI has more narrowly been the expansion of economic opportunities and exports. The question we raise in this paper concerns the extent to which the prioritization of economic growth encourages GI regulators to accept and even encourage ahistorical territorial and production specifications that disadvantage or discourage the oldest and most traditional producers. This argument centres around two renowned producers in the historical Mikawa Region of Japan, which have struggled to realize the potential of GI or have become embroiled in legal disputes. We document how the GI authorities' top-down implementation and utilitarian view of promoting production has clouded their ability to evaluate patrimony based upon historical merit, leading to unfavourable starting positions for famous products with hundreds of years of history.

Keywords – Japan, patrimony, top-down, GI

INTRODUCTION

The global spread of Geographical Indications (GI) policies has provided heritage agri-food producers an opportunity to promote and safeguard the link between their products and a geographically-specified reputation, but this potential is highly dependent on the institutional structures created for to evaluate and certify claims of producers (Marie-Vivien & Bié-nabe, 2017). In East Asia, as in many regions where independent European-style GI policies have been recently adopted, governance of GIs has been predominantly state-centred, with governments actively shaping the landscape they regulate (Feuer, 2020). Japan, which has a long and rich history of home-grown territorial agri-food certifications, has additionally implemented two GI systems in recent decades: a regional collective trademark in 2006 (administered by the Patent Office) and a *sui generis* GI in 2015 (implemented by the Ministry of Agriculture, Forestry and Fisheries, MAFF). Generally, the collective trademark adopts a hands-off approach, allowing producers to independently make submissions

and evaluating them based on the strict criteria of patent law, including originality, historical provenance, and legitimate representation (Port, 2014). The *sui generis* GI system also refers to such criteria but, as we argue in this paper, can also prioritize applicants who represent economic growth over historical patrimony. The potential conflicts and contradictions associated with the business-oriented GI model promulgated by the MAFF has been documented (Galeazzi, 2018), particularly in how it impacts the outcome for long-established, so-called “old glory” products (Defrancesco & Kimura, 2018).

Since the inception of the *sui generis* GI system, the Mikawa region of Japan, a historical territory absorbed into Aichi Prefecture in 1871, has been at the centre of numerous conflicts and issues related to the approach of using GIs as a tool for economic expansion. By 2022, it is the only region with a withdrawn GI and a GI under legal review; it also features numerous cases of renowned agri-food products that are not attracted by the GI model presented by the MAFF. Particularly for “old glory” products, in which weak or antagonistic governance has persisted for generations, we argue that the privileging of economic output by an interventionist GI authority will have negative impacts on heritage preservation. Japan’s early experiences can serve as a warning sign for the many governments in East Asia and elsewhere who impose a politicized market logic on the unfolding of their GI system.

METHODS

The primary data is derived from semi-structured interviews among producers of Hacho Miso and Kokonoe Mirin in the Mikawa region in November 2021, as well as follow-up data provided in the intervening months. These data were analysed qualitatively. Individual accounts were triangulated through reference to publicly available information by various government ministries, legal documents, and re-analysis of accounts of the Mikawa region by scholars and students, who have evaluated different agri-food products in the preceding 10 years.

RESULTS

Strong governance is scarce for famous products

The agri-food products studied in this paper are long-established, with a history ranging from 250 years (Kokonoe Mirin) to more than 650 years (Hacho Miso). It can be assumed that, during the

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intervening years, the relationships between neighbouring producers have undergone many evolutions – competition, cooperation, independence, and everything in between. If researchers in 2021 encounter weak, strained, or combative relations, there is likely to be a long-standing basis for this.

In fact, Kokonoe Mirin, one of the 7 remaining producers in the region (down from 30 historically) does not have a working relationship with neighbouring mirin producers, except for contributing to an annual festival. Even in the context of declining mirin consumption across Japan, Kokonoe do not see other (far more industrialized) producers as a partner for promoting their product, which is predominantly artisanal. Divergent views about production scale and quality continue to make collaboration in a producer group—required in GI application—unlikely.

The producer landscape for Hatcho Miso is even more contentious. Two producers with a provenance of more than 600 years are located in the namesake municipality (*Hatcho district, Okazaki City*), while other producers of a similar red miso are distributed both inside and outside of the Mikawa Region. A timeline of recent interactions between these producers (see Figure 1) reveals the uneasy efforts before 2006 to cooperate within the framework of the Aichi Prefectural Miso and Tamari Soy Sauce Industry Cooperative, due to disagreements about usage of the term “Hatcho Miso”.

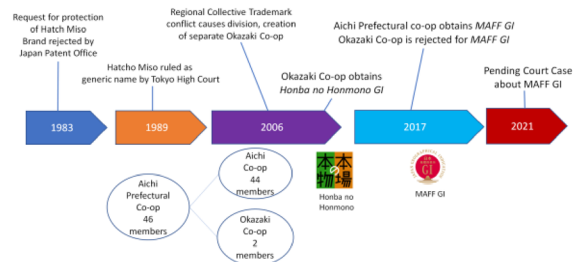


Figure 1. Timeline of relationship between the Aichi Prefectural and local Okazaki Co-operatives and GI certifications.

Forceful efforts by other members to use the name Hatcho Miso in a collective trademark splintered the prefectural cooperative and led to the establishment of a competing producer association from Okazaki. Strict patent laws led the industry cooperative to abandon their application for a collective trademark, but it was eventually granted a GI from MAFF on economic grounds, leading to legal action by Okazaki producers that is still ongoing.

Top-down control disadvantages heritage producers
In both cases of Mikawa products, the expansionist market orientation of MAFF's GI is a double-edged sword for “old glory” producers. They value intellectual property protections and synchronization with global standards, but are ambivalent toward efforts to set lower, or more “inclusive” standards that valorise rivals with less patrimony and unique product standards. MAFF can justify privileging inclusivity as an effort to revitalize a declining miso sector, while historical producers may view this as allowing industrial producers to free ride on long-established

reputation. Kokonoe Mirin consider that many neighbouring producers have diverged too far from authentic production practices to work with. Okazaki Hatcho Miso producers are similarly proud of their uncompromising commitment to authenticity, which even included shutting down during World War II rather than following war-time production orders.

CONCLUSIONS

Our analysis shows that the historically legitimate regional delimitations and constellations of traditional practices that have defined very old products are marginalized or undervalued by strong GI regulators with an economic expansionist focus. Merit-based or democratic mechanisms for inscribing GIs based on internal motivations, such as pride, fraud-prevention, and global recognition are replaced by strategic concerns reflecting political goals, such as inclusivity, efficiency, upscaling, and export. For Hatcho Miso, bubbling rivalries concerning authenticity and exclusivity led to duelling GI applications and a deterioration of cooperative behaviour. For Kokonoe Mirin, longstanding competition between breweries in the region and the lack of differentiation offered by the GI label failed to galvanize mirin producers in the Mikawa region to cooperate.

For long-standing producers, hesitance to industrialize represents a *raison d'être*. Therefore, the model of economic expansion governed by MAFF presents a disadvantageous platform for adjudicating historical rivalries. While fractious cases have been overcome worldwide, such as in the case of Aceto Balsamico di Modena in Italy, a more conventional intellectual property framework like trademarks may offer more flexibility for historical “frenemies” to differentiate more precisely while protecting patrimony. Such outcomes may also have relevance for European GIs, in which industrial players are beginning to play more influential roles.

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